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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,029	08/10/2001	Gopal B. Avinash	GEMS:0139/yod 15-NM-5726	5215
7590	04/05/2006		EXAMINER SMITH, RUTH S	
Patrick S. Yoder Fletcher, Yoder & Van Someren P.O. Box 692289 Houston, TX 77269-2289			ART UNIT 3737	PAPER NUMBER

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,029

Applicant(s)

AVINASH ET AL.

Examiner

Ruth S. Smith

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,23-27,92-109 and 113-137 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,23-27,92-109 and 113-137 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-20,23-27,113-117,120-128,130-137 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampotang et al in view of Strauss. Lampotang et al disclose a method of imaging the chest, which can show cardiac activity, whereby a trigger signal is used to trigger the imaging sequence. The trigger signal is a predicted signals based upon a predicted respiration signal. The predicted signal can be obtained by measuring the time between peak respiration signals and then predicting the occurrence in time of the next signal. The sensor used can be non-intrusive and can include a transthoracic belt. Lampotang et al further discloses in column 10, the use of time adjustments to account for imaging system delays. Any predictive algorithm used would inherently result in a prediction error. Strauss discloses providing real-time system corrections related to timing signals. It would have been obvious to one skilled in the art to adjust the times determined based upon the prediction error in order to accurately trigger the event at the desired time wherein such adjustments are done in

real-time as is a known expedient in the art in order to provide timing adjustments as quickly as possible. With respect to claim 15, Lampotang et al uses a physiological detector to detect the portion of a cyclical pattern. In the absence of any showing of criticality, the specific type of detector used would have been an obvious design choice of known equivalents in the art. It is well known in the art to filter out signals having undesired frequencies in order to detect the desired physiological signal. With respect to claims 115,116, in the absence of any showing of criticality, whether the sensor is placed on the patient or is remote from the patient would have been an obvious design choice of known functional equivalents in the art.

Claims 118,119,129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampotang et al in view of Strauss as applied to claim 113 above, and further in view of Orlando. The use of motion sensors to detect heart motion and/or respiratory motion is old and well known as seen for example in Orlando. Therefore, it would have been obvious to one of ordinary skill in the art to have further modified Lampotang et al such that the sensor used is configured to detect physical motion of the body to indicate cardiac and/or respiratory activity. Such a modification merely involves the substitution of one well known type of physiological sensor for another.

Claims 1-20,23,25-27,92-105,107-109,113-133,135-137 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watrous in view of Orlando and Strauss. Watrous discloses a method of triggering an imaging system which includes detecting a physiological activity and predicting a future occurrence of a particular feature of the measured activity. The predicted future occurrence is then used to trigger the image data acquisition. Watrous discloses that the images should be taken at a point where the heart or other anatomy of interest is in a relatively constant posture. Watrous further discloses that the technique is not limited to the use of EKG signals (see column 1, lines 47-49, column 2, lines 60-63). The use of motion sensors to detect heart motion and/or respiratory motion is old and well known as seen for example in Orlando. In the absence of any showing of criticality, whether the sensor is placed on the patient or is

remote from the patient would have been an obvious design choice of known functional equivalents in the art. The sensor of Orlando includes means for filtering out signals of undesired frequencies. Therefore, it would have been obvious to one of ordinary skill in the art to have modified Watrous such that the sensor used is configured to directly sense surface motion of the body to indicate cardiac and/or respiratory motion. Such a modification merely involves the substitution of one well known type of physiological sensor for another. With respect to claims 104,132, the neural network inherently performs the analysis as set forth in the claim. With respect to claims 1,92,113, it appears that the ANN inherently performs the calculations and adjustment as set forth as set forth, with the exception of real-time adjustments, however, it should be noted that in the absence of any showing of criticality, the specific manner in which the prediction occurs would have been an obvious design choice of known equivalents in the art. Strauss discloses providing real-time system corrections related to timing signals. It would have been obvious to one skilled in the art to adjust the times determined based upon the prediction error in order to accurately trigger the event at the desired time wherein such adjustments are done in real-time as is a known expedient in the art in order to provide timing adjustments as quickly as possible. With respect to claims 26,27,108,109,136,137, it should be noted that Watrous would involve imaging of an anatomy of interest where motion occurs and therefore, the imaging of the event would appear to be inherent.

Claims 24,106,134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watrous in view of Orlando and Strauss as applied to claims 1,92,113 above, and further in view of Lampotang et al. Lampotang et al disclose a method of imaging the chest, which can show cardiac activity, whereby a trigger signal is used to trigger the imaging sequence. The trigger signal is a predicted signals based upon a predicted respiration signal. The predicted signal can be obtained by measuring the time between peak respiration signals and then predicting the occurrence in time of the next signal. A cardiac sensor can also be used to provide a trigger signal in addition to the respiration signal. (See column 9). The sensor used can be non-intrusive. Lampotang et al further

discloses in column 10, the use of time adjustments to account for imaging system delays. It would have been obvious to one skilled in the art to have modified Watrous such that it uses the means disclosed by Lampotang et al to obtain trigger signals which are predicted based upon detected physiological signals. Such a modification involves the substitution of one known means for obtaining predicted signals to be used as a trigger for an imaging system for another.

Claims 92-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampotang et al in view of Strauss and Orlando. Lampotang et al disclose a method of imaging the chest, which can show cardiac activity, whereby a trigger signal is used to trigger the imaging sequence. The trigger signal is a predicted signals based upon a predicted respiration signal. The predicted signal can be obtained by measuring the time between peak respiration signals and then predicting the occurrence in time of the next signal. A cardiac sensor can also be used to provide a trigger signal in addition to the respiration signal. (See column 9). The sensor used can be non-intrusive and can include a transthoracic belt. Lampotang et al further discloses in column 10, the use of time adjustments to account for imaging system delays. Any predictive algorithm used would inherently result in a prediction error. It would have been obvious to one skilled in the art to adjust the times determined based upon the prediction error in order to accurately trigger the event at the desired time. Strauss discloses providing real-time system corrections related to timing signals. It would have been obvious to one skilled in the art to adjust the times determined based upon the prediction error in order to accurately trigger the event at the desired time wherein such adjustments are done in real-time as is a known expedient in the art in order to provide timing adjustments as quickly as possible. The use of motion sensors to detect heart motion and/or respiratory motion is old and well known as seen for example in Orlando. The sensor of Orlando includes means for filtering out signals of undesired frequencies. Therefore, it would have been obvious to one of ordinary skill in the art to have further modified Lampotang et al such that the sensor used is configured to detect physical motion of the

body to indicate cardiac and/or respiratory activity. Such a modification merely involves the substitution of one well known type of physiological sensor for another. With respect to claim 104, the neural network inherently performs the analysis as set forth in the claim.

Response to Arguments

Applicant's arguments filed March 20, 2006 have been fully considered but they are not persuasive. In response to applicant's argument that Strauss is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the problem being dealt with is not a medical problem or an imaging problem but one that deals with providing proper timing signals. Strauss teaches providing real-time correction to timing signals. The advantage of such is to provide timing adjustments as quickly as possible. One skilled in the art would have looked at any system that adjusts timing signals in order to determine the best manner in which to quickly provide adjustments to these signals.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S. Smith
Primary Examiner
Art Unit 3737

RSS